

CHAPTER 11

AGREEMENT AMENDMENTS

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CHAPTER 11

AGREEMENT AMENDMENTS

11.0 Introduction

During the course of administering a TxCDBG agreement, situations may occur that require a change in the original terms of the agreement. These changes are referred to as agreement amendments. The type and scope of change as it relates to the scope, location, or beneficiaries of the project determine whether a minor amendment is acceptable or whether a full amendment is necessary. All changes must be related to the project.

Request any changes to the agreement using the Amendment page in the TDA-GO system. **NOTE:** While an amendment is pending in TDA-GO, no Payment Requests, Performance Reports, or other related documents may be created. For complex or significant project changes, please discuss with TDA staff prior to beginning the Amendment in the system.

To begin an Amendment, change the status of the Application/Grant. Scroll to the **Status Options** section of the navigation pane and select **Amendment Request in Process (CDBG)**. The Amendment Request Form will become available.

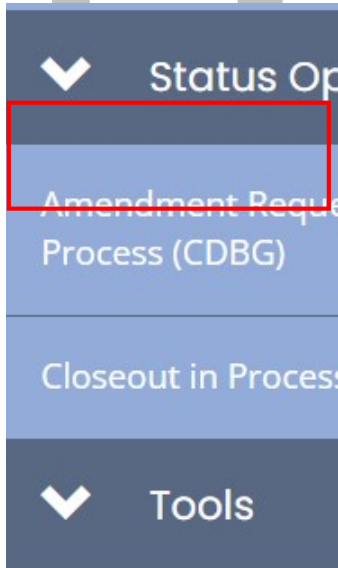


Figure 1. Create a new Amendment

Complete the required fields and save the form:

- Purpose of Amendment – Provide a brief summary of the request that can be use to distinguish between Amendments. **EXAMPLE:** Remove Main Street water line; adjust final quantities; extension for acquisition delays.

- Justification – Explain why the Amendment is necessary, including technical recommendations, description of any extenuating circumstances, and alternatives that have been considered.
- Exhibits – Check the box for each section of the Grant Agreement being requested to change. If a proposed project change will impact more than one section of the contract, check all appropriate boxes in a single Amendment – TDA must consider all related changes at once. **EXAMPLE:** If a grant period extension will be needed to complete additional work proposed in a Performance Statement Amendment, the extension should be included in the same amendment.

CDV2021024

Agreement Certification ☒

Grant Overview ☐

Amendment

Amendment Request Form ☒

▼ Status Options

Amendment Request Submitted

Amendment Request Cancelled

▼ Tools

Landing Page

Add/Edit People

Status History

Attachment Repository

Amendment Request Form

Instructions:
Please complete this page and press save.
Required fields will be marked with an *

Amendment # *

Purpose of Amendment

0 of 100

Justification - Please explain why this Amendment is necessary. *

0 of 4000

Figure 2. Amendment Request Form

- If the requested grant agreement change is related to a construction contract change order, a request to approve the change order must be submitted at the same time as the Amendment request.
 - Navigate to the existing **Materials & Services Report, MSR Change Orders** page.
 - Complete the form, **Save** the page, and change the status to **MSR Change Order in Process**.

Figure 3. Materials & Services Report, Change Order page

11.1 Performance Statement Changes

Agreements are awarded based on the information presented in the original application. TDA will review any change to the Performance Statement. For grant agreements originally awarded within the TDA-GO system, this is known as the Eligible Use of Funds section of Exhibit A that is requested to ensure that federal, state, and programmatic requirements continue to be satisfied.

At a minimum, the Grant Recipient should evaluate the Performance Statement once a bid has been accepted and submit an amendment as appropriate to accurately reflect the project that will be awarded. A copy of the bid tabulation or project plan sheets should be submitted with this request.

Requests to Revise the Original Project

Grant Recipients were selected for funding based on their proposed project and are expected to carry it out as proposed. Any requested changes in the scope of work will be reviewed to determine if the revised project is supported by the original application.

- A change in the construction work required to complete a project may be approved if the resulting benefit to the community is the same need identified in the application. **EXAMPLE:** The city needs to increase storage capacity but has determined that a ground storage tank is more cost-effective than the new standpipe originally proposed.
- The revised project will be re-evaluated according to the scoring criteria used at the time the original application was submitted. If the proposed amendment alters the original application score to the degree that the project would not have been recommended for funding, the amendment request will not be approved. Major reductions in the scope of the proposed work can result in grant reduction or termination.

- The revised project must meet all environmental review requirements. The Grant Recipient must re-evaluate the environmental review and any prior Finding of No Significant Impact (FONSI) for the project to determine whether any previous clearance still applies to the revised project. It is critical that Grant Recipients complete this re-evaluation. Supplemental information or a new environmental clearance may be necessary for the revised project to be an eligible TxCDBG project.

Requests for Additional Work Requests to be Added to the Performance Statement

- Once construction has begun for the original project, and remaining funds are identified that will be available for additional work, the Grant Recipient may request to expand the scale of the current project.
- The Grant Recipient may also request to add a separate project listed in the original application as a community need. The application must describe a project (**EXAMPLE:** Improve water quality) and not simply name the activity (**EXAMPLE:** Water system improvements) in order to be considered.
- Re-evaluated application scoring is not required for additional work added when the original project is substantially complete.

Requests for Substitute Project

- TDA will not approve requests to add a different or new project or activity that was not identified in the application, unless the new project is proposed because the original project has been determined unsuccessful or not feasible as a direct result of either
 - a natural disaster event, documented by presidential or governor's declaration, or
 - a decision by a federal or state agency which prevents the contractor from completing the original project.
- Failure of the Grant Recipient to do due diligence in identifying the need for the proposed project is not grounds for an alternative project or location, and at TDA's discretion, may result in grant reduction or termination. **EXAMPLE:** Upon inspection, it was determined that the line on Main Street had recently been replaced; the city has reevaluated the proposed street reconstruction and determined that the street is in fair condition; or similar condition that a reasonable person should have identified prior to proposing the project.
- Changes in local priorities are not grounds for approval of an alternative project or location.

11.1.1 Performance Statement Amendment Support Documentation

Performance Statement Track Changes

All Performance Statement Amendments for TxCDBG grants require upload of a document identifying the specific language to be revised.

- Generate a copy of the current Performance Statement in Word Format by clicking the link below the summary text box.
- Enable the track changes feature. Manual tracking of edits, such as text manually formatted with strike through and underline font, is not acceptable.
- Edit the document – the track changes feature will show all text proposed to be added, deleted, or revised.
- Upload the Track Changes document in the field provided.

Performance Statement Amendments also require completion of the second page in the Amendments section, called Proposed CDBG Performance Statement Revisions. Responses to the questions on this page may require additional documentation to be uploaded.

The screenshot shows a web interface for an 'Amendment Request Form'. On the left is a sidebar with navigation links: 'Amendment Request Form' (selected), 'Proposed CDBG Performance Statement Revisions', 'Status Options' (expanded), 'Amendment Request Submitted', 'Amendment Request Cancelled', and 'Tools'. The main content area is titled 'Exhibit A' and contains the instruction: 'Check the box for each section of the Agreement where revisions are proposed.' Below this is a checkbox labeled 'A. Request to change Performance Statement / Scope of Work', which is checked. Underneath is a text input field labeled 'Brief summary of requested changes. *'. A red arrow points to this text field. At the bottom of the page, it says '0 of 2000'.

Figure 4. Request to change Performance Statement and/or Scope of Work

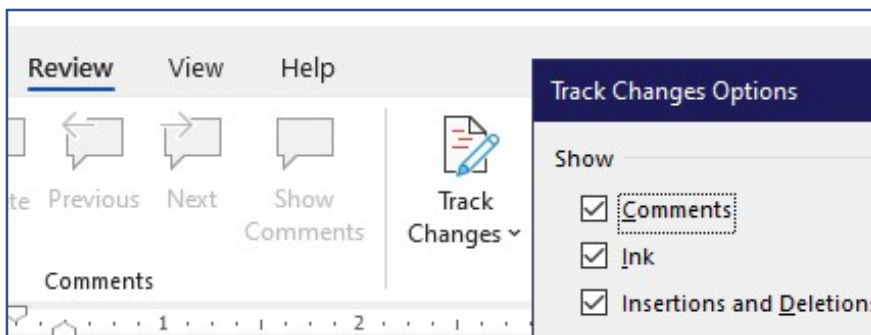


Figure 5. Track the changes in your document using the Track Changes option in MS Word

Public Participation

Performance Statement Amendments require public participation unless the proposed changes meet the requirements as a Minor Amendment. A public hearing allows the residents of the Grant Recipient's jurisdiction to have an opportunity to comment on the proposed changes.

Is This a Minor Amendment?	
<p>Will the project as requested serve substantially the same beneficiaries as the current Performance Statement?</p> <p><input type="checkbox"/> no change in beneficiaries, regardless of quantities;</p> <p><input type="checkbox"/> increase in beneficiaries, but no new Benefit Area; or</p> <p><input type="checkbox"/> decrease in beneficiaries of less than or equal to 25%—based on number of persons or households.</p> <p>AND</p> <p><input type="checkbox"/> does not removal of a section of the project to create two or more non-contiguous Benefit Areas.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
Are the activities' categories the same as the current Performance Statement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the project still solve the same problem identified in the current Performance Statement?	<input type="checkbox"/> Yes <input type="checkbox"/> No

If the answer to all three questions is **Yes**, respond “No” to Question 1 on the Proposed CDBG Performance Statement Revisions page
 If the answer to any question is **No**, public participation is required.

Public participation for an Amendment includes:

- A resolution from the city council or commissioner's court that indicates support for the proposed changes; and
- Notice of the public hearing held regarding the amendment, including a brief description of the proposed project changes. See *Chapter 1 Administration and Reporting Section 1.1.5* for detailed instructions regarding public hearings, notices, and documentation.

TDA reserves the right to require a Public Participation at its discretion.

Figure 6. Review questions

Beneficiaries

Amendments requesting to add or delete an entire Benefit Area cannot be submitted without first contacting TDA. After an initial discussion, TDA staff will check the box beneath Question 2 to acknowledge this significant change.

Upload appropriate beneficiary survey documentation (LMISD data or income survey packet) in the field provided.

Figure 7. Continue to answer the questions

Locations

Amendments proposing to change the locations of the work to be performed must provide Census Information and two maps.

- Census Table – Identify the County, Census Tract, and Block Group information for the proposed locations. Click the + to create a new row for each census tract.
- Color-coded revised project maps showing the locations of the original and amended project activities. The map(s) must use separate colors/markings to identify on the same map:
 - Original/previously approved project locations;
BEST PRACTICE: For expedited TDA review, mark these locations in purple and/or single solid lines;
 - Locations proposed to be deleted from project;
BEST PRACTICE: Mark deleted locations in orange and/or dashed lines;
 - Locations proposed to be added to the project;
BEST PRACTICE: Mark added locations in yellow and/or double solid lines; and
 - Service area for the project;
BEST PRACTICE: Mark service area with black delineating lines.
- Project map showing the locations of all work as proposed. This “clean” map will become a Figure in the grant agreement if the Amendment is approved.

Amendment

Amendment Request Form

Proposed CDBG Performance Statement Revisions

4. Do the proposed revisions change the following elements: *

☒ the locations as identified on the Grant Agreement Figure / Project Map

County Code	Census Tract (6 digit)	1	2	3	4	5
<input type="text"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Figure 8. Upload supporting documents

Environmental Review

The revised project must meet all environmental review requirements. If an Authority to Use Grant Funds has previously been issued for the grant, the Grant Recipient must re-evaluate the environmental review and any prior Finding of No Significant Impact (FONSI) for the project to determine whether the previous clearance still applies to the revised project. It is critical that Grant Recipients complete this re-evaluation. Supplemental information or a new environmental clearance may be necessary for the revised project to be an eligible TxCDBG project.

- Navigate to the existing Environmental Review Performance Report, Environmental Review Re-evaluation page. Complete the form and save the page.

Figure 9. Be as thorough as possible

- Return to the Proposed CDBG Performance Statement Revisions page. The Authorized Official must check the box to acknowledge the re-evaluation of the environmental review.

Figure 10. Has the environmental review been re-evaluated?

Additional Documentation

- Engineer's Explanation - Upload an engineer's explanation if technical justifications are necessary, or if requested by TDA in order to certify that the benefit area is appropriate. TDA may require a signed and sealed letter, or may accept a copy of an email, depending on the circumstances and information provided.
- Upload other documentation as appropriate.

11.2 Budget Changes

A Grant Recipient may request to transfer TxCDBG funds between budget categories in order to reflect the actual costs of the project.

Budget Amendment Requests for Administrative and Professional Services

- TDA will not approve a budget change to allow the general administration activity grant funds to exceed 16% of construction and acquisition/relocation grant funds.
- If a proposed budget change causes the engineering activity grant funds to exceed 25% of construction and acquisition/relocation grant funds, additional justification must be submitted for TDA approval.

- Any administrative or engineering costs greater than the amount available through the activity budget line items are the responsibility of the Grant Recipient but may be included as matching funds unless otherwise disallowed.
- Requests to move TxCDBG funds from construction and/or acquisition activities to engineering or general administration activities must be submitted in TDA-GO prior to the date work is reported as completed on the Materials and Services Report, Work Completed page. The request must include a description of the additional tasks required by these services providers for the project.

Figure 11. Materials & Services Report, Work Completed page

11.2.1 Budget Amendment Documentation

When the Exhibit B box is checked on the Amendment Request Form, a table becomes available to document the requested change.

- Enter positive numbers in the row for budget item requested to be increased; enter negative numbers for the budget item proposed to be decreased.
- If a new activity is proposed to be added to the grant funding, enter the appropriate information in the blank row. Additional rows may be added by clicking the + button.
- The last row in the table calculates the total request. Ensure that the Requested Change amount in the total row is \$0.00.

Cost Category	Current Agreement Amount	Requested Change
03K	\$100,000.00	\$ 20,000
03L	\$200,000.00	\$ -30,000
14A	\$0.00	\$ 10,000
Admin	\$30,000.00	\$ 30,000

Figure 12. The requested change amount total should be zero

A Grant Recipient may request to transfer funds between budget categories identified in the budget without triggering a Full amendment to the original agreement if

- the cumulative dollar amount of transfers among budget categories is less than or equal to 20% of the total amount of the agreement as specified in Exhibit B of the TxCDBG agreement;
- the transfer of budgeted funds will not change the scope or objective of the project(s) funded through the TxCDBG agreement; and
- if funds are to be transferred into professional services, the total dollar amount in the line item does not exceed the following:
 - General Administration – 16%.
 - Engineering (all line items) – 25%.

11.3 Agreement Period Extensions

TxCDBG agreements allow a specific time period to complete the activities identified in the Performance Statement. This timeline can found in Section C of Exhibit A to the TxCDBG grant agreement.

C. Timeline

Grant Recipient will comply with the following Project Schedule. Failure to comply may result in sanctions as outlined in the TxCDBG Project Implementation Manual, other published guidance, and conditions of this agreement.

Pre-Agreement Cost Begins:

Grant Contract Period Begins:

Environmental Review/Plans & Specifications Recommended to be Complete:

Figure 13. Timeline from Exhibit A of the grant agreement

Rarely, extenuating circumstances beyond the control of the Grant Recipient may prevent the completion of agreement activities within the prescribed agreement period. If a Grant Recipient is reasonably assured that project costs will be incurred beyond the agreement end date and that incurring these costs is beyond the control of the Grant Recipient, an amendment for an agreement extension must be requested from TDA to extend the original agreement end date. In addition, the Grant Recipient may request a short extension to complete additional work if the original project has been completed.

Agreement extensions are appropriate only when construction cannot be completed and/or the beneficiaries will not receive the service or benefit from the use of the new or improved facilities within the agreement period. If construction is completed and beneficiaries are receiving service, but additional reporting is required, see *Chapter 12 Grant Closeout*, or contact TDA staff.

Agreement extensions granted by TDA shall not be construed as a waiver of the **Administrative Threshold Requirements** per *Chapter 1*. See Section 1.1.4. The Progress Threshold #2 will still be applied to open contracts/agreements that have extended the contract/agreement period.

Deadline for Agreement Period Extension Requests

To avoid interruptions to the agreement or possible exclusion of reimbursement for project costs, Grant Recipients should notify TDA staff to discuss an agreement extension as soon as a delay is foreseen and an appropriate timeline can be proposed.

- Because certain other actions cannot be taken in TDA-GO while an amendment is pending, TDA does NOT recommend beginning the amendment request greater than 90 days prior to the agreement end date unless directed to do so by TDA staff.
- Agreement extension requests must be submitted **no later than 30 days** prior to the expiration date of the agreement.
- A request for agreement extension received **less than 30 calendar days** prior to the expiration date will only be considered under one of the following circumstances:
 - 1) Disruption at the end of the project.
 - The project was reasonably expected to be completed within the agreement period;
AND
 - Either a natural disaster event, documented by presidential or governor's declaration, or a decision by a federal or state agency occurred in the 60 days prior to the agreement expiration date which prevented the chief elected official from certifying the project's completion. Normal weather conditions are not considered extenuating circumstances.
 - 2) Financial penalty. A Grant Recipient's agreement extension request does not comply with both of the above requirements and the Grant Recipient accepts financial penalties. The penalties will be assessed, generally to the administrative line item, regardless of the reason for the extension. Financial penalties are reductions in the total grant funds available under the agreement; the funds will be deobligated and may not be transferred to other budget line items by minor or Full budget amendment.

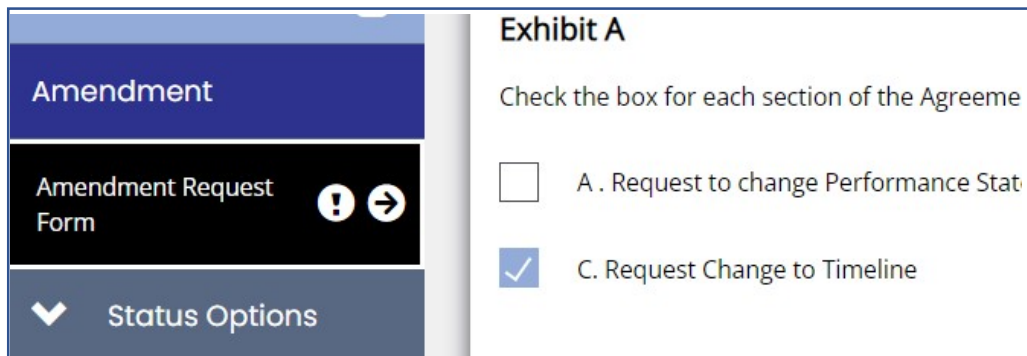
Progress Required for Extension Requests

Requests for extensions to agreements that have not made sufficient progress during the existing agreement period will not be approved.

- Extensions requests for agreements that have not submitted a Request for Release of Funds for Environmental Review will not be considered, as the project is not ready to proceed.
- Extension requests for agreements that have not submitted Materials and Services Record(s) demonstrating obligation of 50% of all grant funds may be considered, but TDA will include additional Special Conditions for the agreement that may include financial or program eligibility penalties if future milestones established by the extension amendment are not satisfied.
- When considering an agreement extension amendment that is not for additional work, TDA will only consider circumstances clearly beyond the control of the Grant Recipient.
- While extenuating circumstances may exist, TDA will also consider the milestones not related to those circumstances in evaluating the Grant Recipient's capacity to effectively complete the project. **EXAMPLE:** Failure to complete the required environmental review within 12 months of the agreement start date indicate serious capacity concerns.

11.3.1 Extension Amendment Support Documentation

When the **C. Request to Change Timeline** box is checked on the Amendment Request Form, a table will show the current end date of the agreement and allow for a new proposed end date.



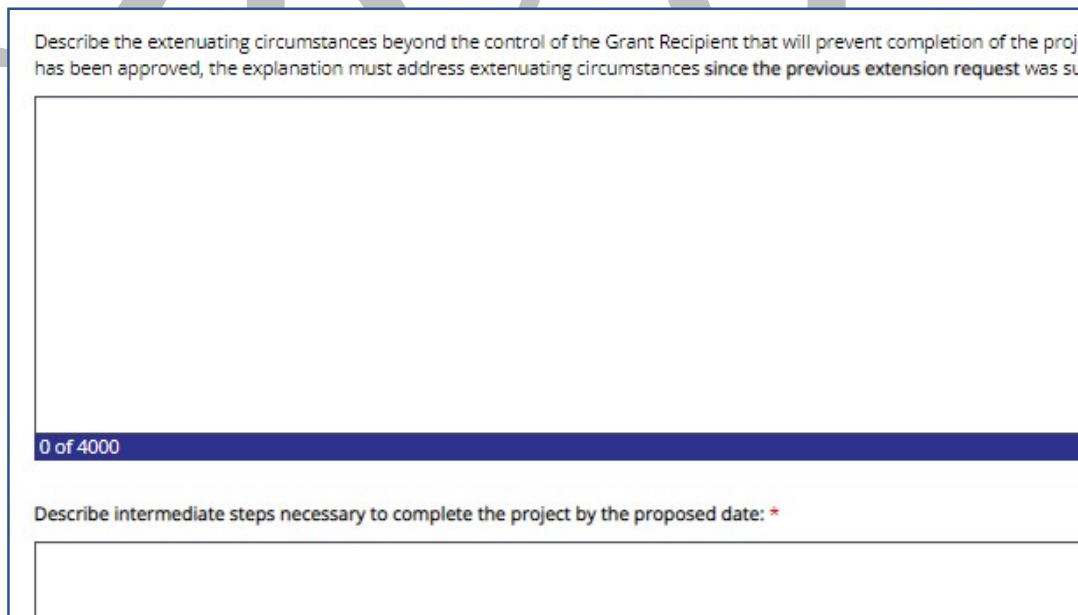
The screenshot shows a sidebar on the left with three items: 'Amendment' (highlighted in blue), 'Amendment Request Form' (with a warning icon and a right arrow), and 'Status Options' (with a downward arrow). The main content area is titled 'Exhibit A' and contains the instruction 'Check the box for each section of the Agreement'. Below this, there are two checkboxes: 'A. Request to change Performance Stat' (unchecked) and 'C. Request Change to Timeline' (checked with a blue checkmark).

Figure 14. Request change to timeline

In addition, provide response to each narrative question. Failure to provide detailed responses that justify the extension request will delay the amendment review process.

Grant Recipients should expect to provide periodic updates for the intermediate steps identified. Examples include, but are not limited to:

- Change order for additional work, estimated to be complete February 2024.
- Regulatory approval for second phase, estimated May 2024.
- Purchase and delivery of electrical equipment, estimated to be complete July 2024.
- Construction completion – 70% complete to date, estimated to be complete July 2024.



The screenshot shows a text area for 'Describe the extenuating circumstances beyond the control of the Grant Recipient that will prevent completion of the project. If an extension has been approved, the explanation must address extenuating circumstances since the previous extension request was submitted.' Below the text area is a blue bar indicating '0 of 4000' characters. Below this is another section titled 'Describe intermediate steps necessary to complete the project by the proposed date: *' with an empty text area below it.

Figure 15. Describe the extenuating circumstances

11.4 Amendment Submittal Process

Once all supporting information for the request has been entered and saved, the Authorized Official may submit the request to TDA by changing the status of the grant to Amendment Request Submitted.

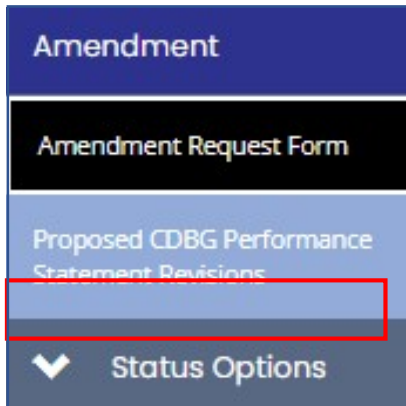


Figure 16. Change the grant status to Amendment Request Submitted

TDA staff will review the request. If recommended for approval, TDA will assign an amendment number.

- All amendments are numbered sequentially, including minor amendments and full amendments, and regardless of the grant agreement sections to be revised.
- Only one amendment request may be active at any given time.
- Grants with multiple amendments can be reviewed by selecting the relevant amendment from the submenu for each amendment page in the navigation menu. Until a number is assigned, the current amendment will have a blank space, while prior amendments will be identified by number.



Figure 17. Only one amendment request may be active at any given time

Each amendment must be approved by TDA staff and the TxCDBG Director(s).

- During the review process, TDA staff may request clarification, revisions, or additional justification.

- Minor amendments, if approved, require no additional action by the Grant Recipient to become effective. The people assigned as Authorized Official, Project Director, and Consultant will receive an email notification of the approval, and the status of the grant will be returned to Grant Executed.
- Full amendments, if approved, require the amendment document to be executed by both the Grant Recipient and TDA executive staff.
 - Once notified by email that the amendment is ready to execute, the Authorized Official must navigate to the Amendment Certification Form.
 - Click the link to generate the Grant Amendment for review. Check the signature box and save the form to execute the amendment.
 - Status change the grant to Amendment Pending TDA Signature.
 - A second email will be sent to the project team when the grant amendment is fully executed.

Amendment

Amendment Request Form

Amendment Certification Form

Status Options

Click here to generate Grant Amendment: Grant Agreement

Authorized Signatory.

Each person signing the Agreement Amendment certifies that he or she is authorized to sign on behalf of the organization and is authorized to sign on whose behalf they are signing to the terms and conditions in the Agreement Amendment.

This Agreement Amendment is executed by the Parties in their capacities as stated below.

By checking this box, I agree to use electronic signatures. Furthermore, I confirm that this is an electronic representation of my signature for all purposes when I use it on documents in lieu of a pen-and-paper signature.

Figure 18. Once notified by email that the amendment is ready to execute, the Authorized Official must navigate to the Amendment Certification Form.